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14 December 2018

The Honorable Shawn M. Garvin
Secretary of the Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, Delaware 19901

Dear Mr. Secretary:

In order to provide you with the greatest time to draft regulations for Coastal Zone Conversion Permits, as directed by the Delaware General Assembly under the Coastal Zone Conversion Permit Act (CZCPA), I am writing to share with you our second set of preliminary recommendations developed by the CZCPA Regulatory Advisory Committee (RAC) at its December 11 meeting.

These recommendations are presented below by topic.

Recommendations regarding Ensuring Economic Benefit to Delaware

From the previous meeting, I wanted to forward a general recommendation of the RAC that I did not include in the first letter. The RAC emphasizes that local, robust hiring is an intent and goal of the CZCPA. Thus, the RAC recommends that the Secretary, to the degree his or her role and authorities allow, seek to encourage and ensure such local hiring preferences and actions.

Recommendations for Reporting Environmental Impact and Net Environmental Improvement on Conversion Permits (7 Del. C. 2017, § 7014(c)(1-3))

Please note the following is a modification to the preliminary recommendation on this topic forwarded to you on 19 November 2018:

• DNREC should produce a baseline report of current use and existing environmental conditions, impacts, and risks on the 14 heavy industry use sites (including but not limited to those items described in Section 7015). In his or her conversion permit application, the applicant may describe any proposed changes from that baseline, further elaborating on the DNREC baseline report as they wish (including providing additional information on the environmental history of the site, if necessary, to explain how the existing environmental conditions came about).

• For CZCPA purposes, environmental impacts should be characterized in the same manner used to characterize environmental impacts under the current CZA permit program, consistent with the existing CZA statutory definition of "environmental impact" (Section 7004(b)(1)).

Recommendations for Evidence of Financial Assurances (7 Del. C. 2017, § 7014(c)(8))

Attached to this letter is a table of recommendations per financial assurances. This table provides information on: (1) event categories of expected financial risk, (2) the process used in establishing financial assurances for each risk event, (3) the way to determine the amount of financial assurances necessary to meet the requirements of the Act, (4) the types of financial assurance instruments available, and (5) each instrument's ability to both adapt to the time horizon of a risk event and to ensure funds are available in the time and amount necessary.

In addition to this table, the RAC offered the following recommendations:

- Financial assurances, in general, must be commensurate with the use (and its associated risks) proposed by the conversion permit applicant.
- The form and amount of financial assurances should be reviewed at appropriate periodic intervals, since financial conditions can change once a conversion permit is in place. Such review should occur for the life of that permit.
- The Secretary should define more clearly "environmental damage," as outlined in the statute. Does such damage include natural resources damages, public health damages, or economic loss associated with natural resource-related activities such as fishing, swimming, boating, and beach going?
- The RAC supports providing a range of financial assurance instruments, from trust funds to captive insurance, as described in the table below. However, self-insurance instruments are not preferred for actions to minimize environmental damage and stabilize and secure the site upon termination, abandonment, or liquidation of site activities, since that time frame is likely many decades out and/or bankruptcy could cause such closure. Thus, the RAC recommends the following:
  - O The Secretary should consider either offering expedited or less complex review for applicants who use third-party instruments or a clearly described, stepped process where the applicant has to explain why, how, and what protections are in place should they utilize self-insurance options.
  - o Like all instruments, self-insurance instruments will need to be reviewed at appropriate periodic intervals.
  - O DNREC review of self-insurance options will likely require expertise beyond DNREC's current staffing and expertise. Thus, the Secretary should ensure that, for any applicant utilizing self-insurance, DNREC is able to cover the additional administrative costs of reviewing and considering such financial instruments and that such costs be taken into account when determining the application fee.

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O The RAC encourages the Secretary to ensure that he or she has the authority, in the periodic review of self-insurance instruments, to require those who self-insure to carry a blended approach of third-party and self-insurance instruments and/or to move to only third-party instruments, as circumstances merit.

Please note that all of the above preliminary recommendations are subject to change based on the feedback received at forthcoming CZCPA Public Workshops.

In the coming meetings in early 2019, I expect the RAC will delineate recommendations for an approach to offsetting net negative environmental impacts and addressing such cross-cutting issues as the definitions of "site" and "anticipated useful life of the facility and infrastructure in connection with the applied-for use." I also foresee the RAC discussing the topics of permit amendments and duration and the need for (and approach to) environmental monitoring, post-permit approval.

Should you have any questions or need for clarification, please feel free to reach out to me.

Sincerely,

Randy J. Holland CZCPA RAC Chair

Randy Holland

## CZCPA Financial Assurance Risk Event Categories, Process, Amount, and Types of Instruments RAC Preliminary Recommendations 11 December 2018

					Types	Types of FA Instruments	ruments		
			[]	Chird-Party	Third-Party Instruments			Self-Insurance	9
Risk Event Category	FA Process	FA Amount	Trust Fund	Letter of Credit	Insurance Policy	Surety	Corporate Financial Test	Corporate	Captive
Actions to address existing site contamination.	CZCPA applications should identify actions, and associated FA, to address	The need for and amount of conversion permit FA should be determined on an							
Time Horizon: Short to Medium	current site contamination. DNREC conducts application-specific	application-specific basis. Such determination should be based on the							
Term	evaluations of the sufficiency of	degree to which existing FA at the site							Funds
	existing FA, coordinating with other is suffi- state and federal personnel familiar with needs. the site.	is sufficient to meeting existing site needs. Amount of FA should be incremental to all existing site FA							Availability
Actions to minimize	A "concept plan" of action(s) must be	Face value should be equal to the							
environmental damage, stabilize	submitted with the conversion permit,	estimated cost of completing the							
and secure the site 'upon termination abandonment or	along with a proposal for associated	activities in the DNREC-approved plan,							
liquidation of site activities'	plan", the permit applicant should be	administration costs. The face value					Not	Funds	Not
	required to procure the approved FA	should be downward adjusted to the					Adaptive to	Availability	Adaptive to
Time Horizon: Medium to Long Term	and evince such FA to DNREC prior to site operation	degree existing FA covers activities identified in the DNRFC annuoved					Long Time Horizons		Long Time Horizons
		plan.							
Actions to address future	Any approved permit should include	The Secretary should consider a two							
environmental contamination	required to address site-specific actions	pronged approach for future possible							
	to address environmental contamination   Secretary should evaluate the potential	Secretary should evaluate the potential							
Time Horizon: Short, Medium,	incidents if/when they occur. DNREC	use and availability of insurance or					Short Term	Short Term	Short Term
or Long Term	should be mindful that other existing	similar mechanisms to ensure							
	state/rederal requirements may	availability of some funding in advance							
	actions pursuant to other regulatory	event. Second, following an incident,					Medium to	Medium to	Medium to
	authorities.	DNREC should ensure that sufficient					Long Term	Long Term	Long Term
		FA is put in place such that the face							
		value should be equal to the estimated							
		cost of specified actions to minimize							
		DNREC oversight/ administration costs							
		The face value should be downward							
		adjusted to the degree existing FA							
		covers such actions.							

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				Short Teri				Medium t	Long Ter
				Short Term   Short Term   Short Term				Medium to   Medium to   Medium to	Long Term   Long Term   Long Term
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Face value should be equal to the	any site or infrastructure improvements estimated cost to maintain and/or repair	relevant infrastructure and site	improvements, including DNREC	on oversight/ administration costs. The	face value should be downward	adjusted to the degree existing FA	al covers such actions.		
Maintenance or repair of site or   CZCPA applications should identify   Face value should be equal to the	any site or infrastructure improvements	that will be undertaken to address sea	level rise or coastal storms. DNREC	conducts application-specific evaluation oversight/ administration costs. The	of the extent to which FA is needed to face value should be downward	ensure sufficient funds to address	associated maintenance and/or potential covers such actions.	future repair.	
enance or repair of site or	infrastructure improvements to	address sea level rise or coastal	storms		Time Horizon: Short to Long	Ferm			

## KEY:

FA instrument is adaptive to the time horizon of the risk event and provides reasonable assurance of funds availability in the timing and amounts necessary assuming the instrument is structured correctly.

FA instrument is not easily adapted to the time horizon of the risk event or may not provide reasonable assurance of funds availability in the timing and amounts suggested by the risk event category.

FA instrument is not easily adapted to the time horizon of the risk event and does not provide the regulator with reasonable assurance of funds availability.